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C O N F I D E N T I A L SECTION 01 OF 03 TEGUCIGALPA 000546

SIPDIS

STATE FOR EB/TRA, WHA/EPSC, AND WHA/CEN
STATE FOR EB/TRA (DHAYWOOD)
TREASURY FOR DDOUGLASS
COMMERCE FOR AVANVUREN, MSIEGELMAN
STATE PASS AID FOR LAC/CAM

E.O. 12958: DECL: 03/08/2015

TAGS: [EWWT](#) [ETRD](#) [ECPS](#) [EINV](#) [PGOV](#) [KMCA](#) [HO](#)

SUBJECT: HONDURAS: PORT FEE NOT SUSPENDED AFTER ALL;
PRIVATE SECTOR FEELS BETRAYED

REF: A. A) TEGUCIGALPA 399

[B. B\) TEGUCIGALPA 363](#)

[C. C\) TEGUCIGALPA 331](#)

[D. D\) TEGUCIGALPA 341](#)

Classified By: Economic Chief Patrick Dunn for reasons 1.4 (b) and (d).

[11. \(C\) Summary:](#) Contrary to alleged assurances made by President Maduro on February 11 that he would suspend publication and entry into force of the controversial new contract for x-ray scanning at Puerto Cortes, the contract was published in the official Gaceta on February 15. The question of who will pay the contracted fee of \$55 per container remains unanswered. A united private sector group believed it had succeeded in temporarily halting the entry into force of the contract, fearing the potential economic damage that the fee would do to Honduran competitiveness. Now, citing perfidy by the GOH, the private sector is threatening to sue, while the GOH alleges a conspiracy against it by shadowy forces seeking to block security improvements at the port. Post will continue to stress to all parties that an efficient, secure, and competitive port is the key infrastructural element in Honduras' strategy of export-driven growth. End Summary.

[12. \(C\) The GOH recently approved a USD 55 per container fee for x-ray scanning at Puerto Cortes \(Ref C\). This fee, if passed on to port users, will dramatically increase port costs, potentially rendering the port uncompetitive and diverting trade and investment away from Honduras \(Ref D\). The private sector is united in opposing this new fee \(Ref B\). On February 11, the private sector approached the President to request that he delay publication of the approved contract. Post previously reported \(Ref A\) that at that time the President undertook to consult with his advisors and reply to the group in the next few days, but that there was apparently no firm guarantee that the contract would not be published. Subsequently, several private sector sources have told Econ Chief that they left that meeting with the understanding that publication would indeed be delayed.](#)

[13. \(C\) In actuality, the printing request had been submitted weeks before, on February 3, and was already scheduled for printing on February 15. Mechanical difficulties delayed printing until February 17 \(though when printed the Gaceta -- Federal Register equivalent -- was back-dated to February 15\). On Friday, February 18, Minister of the Presidency Luis Cosenza delivered a written reply to the private sector's appeal of February 10, in which he wrote that the GOH had no power to delay printing and that to do so would have been an "abuse of authority." \(Comment: If true, this rule is honored in the breach: the GOH has a history of not publishing legislation as a means of delaying entry into force. More frustrating for the private sector, Cosenza did not raise this objection at the February 11 meeting, instead allowing them to think the matter was in suspension pending discussions when, in fact, the contract was already at the printing office. End Comment.\)](#)

[14. \(C\) In his February 18 letter, Cosenza also said that at no time has the GOH claimed that the project was mandated by the USG to assure certification of Puerto Cortes. Several sources, including GOH Congressmen, claim administration officials said precisely that to Congress to get the bill passed. Cosenza also wrote that the question of who pays the fees is yet to be worked out and that he awaits the results of the Alvarado Commission before he will "sit down to listen to the point of view" of the private sector. The private sector counters that the Commission headed by former Minister of Finance Arturo Alvarado, tasked with considering payment methods for the fees, has not been called to session in the last two weeks. Some are beginning to suspect the Commission is a stalling tactic and that the fee structure will be sprung on them as a fait accompli, as were both the passage of the bill through Congress and its publication in the Gaceta.](#)

[15. \(C\) Comment:](#) Post finds Alvarado a credible and honest

interlocutor and does not believe he personally is stringing the private sector along. That said, he has been given the nearly impossible task of finding a source for USD 55 per container in new fees. Unless the GOH is willing to pay much of this new fee from increased customs revenues -- and we have no indication they are willing to do so -- then the Commission will have no choice but to recommend the fees be passed on to port users. This will appear to the private sector to confirm their worst fears, that the entire exercise was for show, that the GOH intended to stick them with the fees all along, and that the Commission was a farce. The fact that the Commission is not actively meeting (which the GOH attributes to intransigence on the part of the private sector), and that Minister Cosenza refuses to even listen to the private sector point of view until the Commission reports its findings, only deepens private sector cynicism. However, this stonewalling method is used frequently to settle disputes in Honduras, leading to de facto acceptance of new policies over time. End Comment.

16. (SBU) On February 22, private sector representatives, meeting to discuss next steps, expressed anger and resentment at the GOH's response to their concerns. The group reviewed its litany of complaints (reported extensively in reftels) about the bid solicitation, the pricing structure, and the likely impacts on competitiveness. Honduran Industrialists Association (ANDI) President Adolfo Facusse then noted that the Port Authority (ENP) generates net revenues of approximately 280 million lempiras annually, of which 33.6 million are transferred to local government and 210 million to the central government, leaving the port with 38 million lempiras (about USD 2 million) in profits. Using the contractually-stipulated baseline of 300,000 containers per year (well above the 240,000 that actually arrived in 2004, another source of contention), the scanning consortium will be owed approximately 195 million lempiras in payments per year. Obviously, Facusse said, the Port Authority could not pay these fees, as that would entirely exhaust the entire year's cash flow and bankrupt the port. Some other source must be found to pay, and he is convinced the GOH intends that it be the private sector.

17. (SBU) Some present noted that physical constraints made it impossible for everyone to abandon Puerto Cortes at the same time. Additionally, for some Honduran shippers, the costs of doing so would be prohibitive. Finally, the Honduran Private Enterprise Council (COHEP) representative asked how shippers would get all those goods to Guatemalan ports? If the private shippers tried to set up their own firm just to transport goods to Guatemala, he said, "the truckers' unions would take over the highways" in protest. Many agreed with these points but noted that Maersk and Crowley, two major shippers with regional traffic sourced from Nicaragua and El Salvador, have each announced plans to abandon Cortes if fees are set too high. Since both previously used Guatemalan ports, before being lured away by price cuts and preferential treatment at Cortes, their threat to return to Guatemalan ports is a credible one and could cost Puerto Cortes up to 100 million lempiras annually, according to some published estimates. Maersk officials claim they could switch ports over a period of just eight days.

18. (SBU) The group brainstormed options, eventually listing nine for consideration: (1) demand a new contract; (2) demand the GOH pay the entire fee; (3) launch a PR campaign alleging corruption; (4) open the scanning service to multiple providers to spur competition and lower prices; (5) listen to the "siren song" of the Alvarado Commission and hope for the best; (6) launch a legal fight to have the contract voided; (7) open negotiations with Santo Tomas and other Guatemalan ports; (8) meet with President of Congress and Presidential candidate Porfirio "Pepe" Lobo and emphasize the political damage this fee could do to his campaign; and (9) demand that Minister Cosenza engage immediately in this discussion. Many of these options can be undertaken simultaneously, but the group decided first to seek nullification of the entire contract via a legal challenge.

19. (C) On February 25, the issue again exploded into the press, with public announcements by a number of companies that they intend to consider switching their shipping to Santo Tomas in Guatemala. The GOH immediately responded, ignoring the private sector's expressed support for the goals of reducing customs fraud and improving security and instead deliberately misrepresenting the private sector's concern not as one of costs but as one of opposition to the objectives. In public remarks, Minister Cosenza said (incorrectly) that the groups that are complaining have refused to support the work of the Alvarado Commission and that opposing this project is the same as supporting smuggling and tax evasion. President Maduro extended this ad-hominem attack by saying that those opposed to the scanning contract fees are smugglers and tax evaders and saying that "there are always those that oppose the imposition of order." Privately, Cosenza made similar remarks to Charge, alleging that the private sector's complaint is merely a front for shadowy

criminal elements conspiring to ensure the GOH cannot crack down on corruption or tighten security. (Comment: Cosenza's comments are disturbing, as they reflect what others involved in port security privately believe about resistance to the new fees, to wit, that there is opposition to enhanced port security by many who benefit for the existing security loopholes. However, neither he nor these others have presented any evidence to support these charges. End Comment.)

10 (C) Comment: Post is increasingly concerned by the GOH's refusal to accept that this fee, if passed on to port users, could be damaging to Honduran competitiveness. For that reason, the private sector has legitimate concerns that merit careful consideration. GOH actions to date (skipping second and third legislative readings by pushing the bill through Congress as an "urgent" measure; and allegedly falsely claiming it was required by the USG for port certification; publishing the law despite alleged agreement to suspend such action pending further consideration) force us to question whether the GOH is fully considering the impact these fees could have on its export sector. Finally, if private sector estimates are correct, the apparent windfall from the scanning fees seems excessive and raises the specter that the project, while based on laudable goals, is being set up as a cash cow for crony interests, such as potentially financing the incumbent party's national campaign this fall. End comment.

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